

TOWN OF TIVERTON  
ZONING BOARD OF REVIEW MINUTES

NOVEMBER 7, 2007

The following petitions were received and were heard by the Tiverton Zoning Board of Review on Wednesday, November 7, 2007 at 7:30 p.m. at the Tiverton Town Hall, 343 Highland Road.

Members present: Chairman David Collins, Jay Jackson, Susan Krumholz, Lise Gescheidt, Richard Taylor and Michael Fairhurst.

Also present were: Wyatt A. Brochu, Town Solicitor, Gareth Eames, Building Inspector and Sally Ferreira, Court Reporter.

1. An appeal has been filed by John & Eileen Moran et al appealing a decision of the Building Official to issue a building permit for a new yacht club structure dated December 1, 2006 at 58 Riverside Drive, Tiverton RI being Block 70 Card 5 on Tiverton Tax Assessor's maps and located in a R40 zone.

\*\*\*\*\* Attorney Nicholson submitted a letter to the board requesting a continuation to the next Zoning Board of Review meeting due to the fact this matter is before the court and Attorney Nicholson is waiting for the court's decision before proceeding on this petition. Chairman David Collins abstained and Mr. Jackson entertained a motion to continue. Ms. Gescheidt made a motion to continue and Ms. Krumholz seconded. The vote was unanimous. Voting were: Mr. Jackson, Ms. Gescheidt, Mr. Fairhurst, Ms. Krumholz and Mr. Taylor.

2. An appeal has been filed by David M & Kathleen Campbell appealing a decision of the Building Official to issue a building permit for a new yacht club structure dated December 1, 2006 at 58 Riverside Drive, Tiverton RI being Block 70 Card 5 on Tiverton Tax Assessor's maps and located in a R40 zone.

\*\*\*\*\* Attorney Nicholson submitted a letter to the board requesting a continuation to the next Zoning Board of Review meeting due to the fact this matter is before the court and Attorney Nicholson is waiting for the court's decision before proceeding on this petition. Chairman David Collins abstained and Mr. Jackson entertained a motion to continue. Ms. Gescheidt made a motion to continue and Ms. Krumholz seconded. The vote was unanimous. Voting were: Mr. Jackson, Ms. Gescheidt, Mr. Fairhurst, Ms. Krumholz and Mr. Taylor.

3. A petition has been filed by Eric Hyson of 58 Wild Rose Drive, Tiverton, RI requesting a variance from Article XIV Section 7.b.(2) and Article IV Section 10 of the Tiverton Zoning Ordinance in order to conduct a tub & wall display showroom/retail business in one unit at 115 Stafford Road, Tiverton, RI being Block 107 Card 10A on Tiverton Tax Assessor's Maps whereby changing a legal non conforming use to a retail business which is not allowed in a R60 zone.

**DECISION:** Eric Hyson and Robin Thibeault came before the board and stated that they want to put a small showroom of about four tub and wall displays so customers can see a finished product and select colors. Mr. Hyson compared the nature of his business to a business called Bath Fitters. Mr. Hyson also stated that much of the business will be conducted at the customer's home but there will be someone at the location to answer the phone and make appointments. Ms. Thibeault stated the outside of the building will not be changing.

Ms. Gescheidt asked Mr. Hyson about the adjacent businesses and Mr. Hyson replied the seafood restaurant is seasonal and he has been told the restaurant is for sale and Primrose Bakery is pretty much open year round.

Mr. Jackson asked the building official why the applicant had to apply for a change of use and Mr. Eames replied the ice cream parlor that was there previously is not considered a retail establishment but rather a food service.

Ms. Siembab a direct abutter to the applicant objected to the granting of this variance due to the fact that previous and present renters at this facility are littering and continue to litter and also she has trouble getting out of her driveway because of traffic. Ms. Siembab asked if the board granted this variance and the applicant did not succeed what would become of the retail space. The Chairman stated that if it was a nonconforming use they would have to come back to this board to get permission. Ms. Siembab was also concerned about the kind of sign that would be going up.

Ms. Thibeault responded that they will not be selling anything out of the store that the granting of this variance is only to allow people to be able to walk into the building. Mr. Hyson stated that he will have two dumpsters in the back of the building. Mr. Hyson also stated that there would probably be UPS drop off maybe once every three weeks and maybe once a month there will be a midsize truck to drop off a shipment of walls or tubs. Mr. Hyson went on to say that his hours of operation will be Monday through Friday 7:30 a.m. until 4:30 p.m. and Saturday morning.

Ms. Gescheidt made a motion to grant this variance because the proposed use would have the same or lesser undesirable impact on the surrounding areas than the former nonconforming use, that the public would not be adversely affected and there would be no adverse traffic consequences or litter consequences or any drain on municipal services, that this building cannot be used for residential purposes and the subject structure cannot yield any beneficial use if it's required to conform to the provisions of

the zoning ordinance. Mr. Taylor seconded. The vote was unanimous. Voting were: Chairman David Collins, Ms. Gescheidt, Ms. Krumholz, Mr. Jackson and Mr. Taylor.

4. A petition has been filed by Daniel J. & Jean M. Puerini of 596 Nanaquaket Road, Tiverton, RI requesting a variance from Article V Section 1 and Article V Section 3.d. of the Tiverton Zoning Ordinance in order to subdivide one lot into two, leaving an existing home closer to the rear yard setback than allowed and creating two substandard lots located at 596 Nanaquaket Road, Tiverton, RI being Block 90 Card 14 on Tiverton Tax Assessor's maps in a R80 zone.

**DECISION:** Mr. Stetson Eddy, the attorney for the applicants questioned Mr. Puerini as to why he was requesting this variance. Mr. Puerini went on to testify. Mr. Eddy submitted various exhibits including photographs.

Mr. Jackson asked Mr. Eddy the question who determined this lot to have unsuitable land and Mr. Eddy responded this is determined by FEMA flood maps. Ms. Rosemary Eva, Chairman of the Planning Board asked if this board decided to grant this variance, that a condition be placed that there be no residential use in the barn.

Ms. Gescheidt stated she did not feel that the witness is competent to testify to the facts that he testified to that this is something that requires more specialized testimony of an expert witness.

The Chairman gave Mr. Eddy the option to continue this matter to bring in an expert witness to satisfy the burden and address some concerns that Ms. Gescheidt has. Mr. Eddy requested a continuance to next month's meeting. Mr. Jackson made a motion to continue and Ms. Gescheidt seconded. The vote was unanimous. Voting were: Chairman David Collins, Ms. Gescheidt, Mr. Jackson, Ms. Krumholz and Mr. Taylor.

5. A petition has been filed by Manuel & Kathryn Cabral of 188 Bridle Way, Tiverton, RI requesting a variance to Article V Section 1 of the Tiverton Zoning Ordinance in order to construct a new single family dwelling on the North side of Bridle Way, Tiverton, RI being Block 215 Card 1A on Tiverton Tax Assessor's Maps closer to the rear yard setback than is currently allowed in a R60 zone.

**DECISION:** Mr. Cabral came before the board and stated now that this land is in a R60 zone he needs 60 feet and he is short 29 feet. Mr. Cabral went on to say he has plenty of frontage but he cannot move the house up further due to wetlands.

The Chairman asked Mr. Cabral if this is a legal lot of record and Mr. Cabral stated yes, that there are 6 acres but most of it is wetlands. Ms. Krumholz asked the applicant how long he had owned this land and the applicant replied twenty-eight years.

Mr. Cabral summarized by stating that this is going to be a very tough lot to develop and he has stringent directions from DEM and if he deviates from those directions DEM will stop him. Mr. Cabral further stated he is somewhat of a conservationist and he would like to keep a lot of the trees and vegetation that is there.

Ms. Krumholz made a motion to grant the variance for the rear setback because special conditions exist making it a hardship and that the relief is not contrary to public interest and it will not change the character of the neighborhood. Mr. Taylor seconded. The vote was unanimous. Voting were: Chairman David Collins, Ms. Gescheidt, Ms. Krumholz, Mr. Taylor and Mr. Jackson.

#### **ADMINISTRATIVE ITEMS:**

The Chairman entertained a motion to accept the minutes of the last meeting. Mr. Taylor abstained due to the fact he was not present at the October meeting although he read them. Ms. Krumholz made a motion to accept the minutes. Mr. Jackson seconded. The vote was four to one. Voting were: Chairman David Collins, Ms. Krumholz, Ms. Gescheidt, Mr. Fairhurst and Mr. Jackson with Mr. Taylor abstaining.

Mr. Taylor stated in 2004 the board drafted and unanimously adopted rules of procedure on how to conduct business. Mr. Taylor went on to say it was clearly stated that exhibits had to be submitted at least seven days prior to the hearing. Mr. Taylor further stated that the board has to stop accepting exhibits that does not meet that standard. Ms. Gescheidt agreed with Mr. Taylor and went on to say it is unfair to the board when they are asked to make a split second decision without having time to do any independent research.

Attorney Brochu suggested one way to handle this situation is to ask the applicant at the beginning of the hearing whether they plan on submitting any exhibits that they did not timely submit and if they say yes, the board can give them the choice to either proceed without submitting the exhibits or continue their petition to the next meeting. Mr. Brochu further stated this policy could be presented to the applicant at the time their application is submitted. The Chairman informed Attorney Brochu that policy is already stated on the application although it is frequently disregarded. The Chairman stated he would try to remember this suggestion and asked the board members to remind him.

Mr. Jackson made a motion to adjourn and Ms. Krumholz seconded. The vote was unanimous. Voting were: Chairman David Collins, Ms. Gescheidt, Ms. Krumholz, Mr. Jackson, Mr. Taylor and Mr. Fairhurst.

Whereupon the Tiverton Zoning Board of Review meeting ended at 9:11 p.m.

C E R T I F I C A T E

I, Salvina S. Ferreira, Registered Professional Reporter, hereby certify that the foregoing pages 1 - 5 of the November 7, 2007, Zoning Board of Review minutes are submitted to the best of my knowledge, skill and ability.

I further certify that I am not interested in the event of the action.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed my seal of office this 19th day of November, 2007.

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Salvina S. Ferreira, RPR

My commission expires: September 26, 2009.

LEDGEWOOD COURT REPORTING  
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